

A!
end

see if the class is defined for any host, and will prevent deletion of assigned classes.

REMARKS

Claims 1-16 are pending in the application.

Specification

The Examiner objected to the disclosure because typographical errors were found, for example at page 11, line 17 “nor” should be “no”. Applicants respectfully submit that appropriate corrections have been made by amendment to the specification as presented herein. Accordingly, Applicants respectfully submit that the Examiner’s objection to the disclosure has been overcome.

Rejections Under 35 U.S.C. §112

The Examiner rejected claims 4 and 12 under 35 U.S.C. 112, second paragraph because the terms “Smserver” and “Smvirtual” are not common terms and are not defined in the specification.

Applicants respectfully traverse the Examiner’s rejection. Contrary to the Examiner’s characterization, the terms “Smserver” and “Smvirtual” are defined in the specification, for example, page 9, lines 3-10, which recites:

“The log file format is generated using modified IIS Server Application Program Interface (ISAPI) filters on Microsoft® Internet Information Server (IIS), or Netscape® Server Application Program Interface (NSAPI) plug-ins on Netscape servers, or extensions for Apache™ servers. A typical log file contains the additional information pertaining to the client IP address, username, date, time, service, server name,

server IP address, processing time, bytes sent, bytes received, service status, operation, target URL, User Agent, referrer parameters, **SMserver**, **Smvirtual** site, and cookie.”

Since the terms “Smsserver” and “Smvirtual” are parameters of a typical log file of well known software, Applicants respectfully submit that the terms are sufficiently defined pursuant to 35 USC §112, Second paragraph. Accordingly, the Examiner’s rejections under 35 USC §112, second paragraph, are improper and should be withdrawn.

Rejections Under 35 U.S.C. §102(b)

Applicant respectfully traverses the Examiner’s rejection of claims 1-5 and 9-16 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,304,892 to Bhoj et al. (hereinafter referred to as “Bhoj”).

Regarding claim 1, the Examiner indicated that “Bhoj discloses a method comprising steps of defining a set of parameters to be measured (cols. 5-6 lines 65-34 and col. 7 lines 22-38); defining acceptance levels for each of parameters in said set of parameters (see col. 6, lines 35 – 61); collecting real-time information related to measurement of said parameters (see col. 11 lines 24-40 and col. 15 lines 7-18); comparing said acceptance levels to said real-time information (see col. 11 lines 41-54); and generating report (see col. 14 lines 39-44 and col. 15 lines 25-30).”

Applicants respectfully submit that, contrary to the Examiner’s characterization, the referenced sections of Bhoj do not anticipate Applicants’ method as claimed in claim 1 of the present application. Rather, cols. 5-6, lines 65-34 and col. 7, lines 22-38 of Bhoj simply provide a broad description of a typical SLA and do not even mention the terms “measured” or “parameters” or any such terms as are the subject of Applicants’ claim.

Applicants further submit that contrary to the Examiner’s characterization, col. 6, lines 35-61 of Bhoj does not anticipate “defining acceptance levels for each parameter in said set of parameters” as claimed. Rather, the referenced section of Bhoj simply provides the terms of a

service provider guarantee. Again, no “measured parameters” or any such term is recited or anticipated by the reference.

Applicants further respectfully submit that, contrary to the Examiner’s characterization, col. 11, lines 41-54 of Bhoj does not anticipate “comparing said acceptance levels to said real time information;” as claimed. Rather, the referenced section recites a comparing step relating to an abstract view of the system wherein “the service manager 200 uses this abstract view to compare the system behavior to the predetermined thresholds and conditions specified in the corresponding contract templates to monitor the SLAs for compliance.” (col. 11, lines 45-49) Applicants submit that this reference does not anticipate comparing acceptance levels according to the present invention to real time information according to the present invention.

Regarding claim 9, the Examiner indicated that “Bhoj discloses a method comprising steps of defining classes of back-end servers (see fig. 2, NEWS SERVERS, E-MAIL SERVERS, WEB SERVER FARM) (see col. 7, lines 14-21); selecting a set of service parameters to be monitored (see col. 12, lines 61-67); creating a database of monitored service parameters (see cols. 11 lines 5-6); and preparing reports and/or alarms (see col. 14, lines 39-44 and col. 15, lines 25-30).”

Applicants respectfully submit that neither Fig. 2 of Bhoj nor col. 7, lines 14-21 of Bhoj anticipate the step of “defining classes of back end servers” as claimed in claim 9. Rather, Fig. 2 of Bhoj “shows a prior art scheme of outsourcing some services of the data service system of Fig. 1 to another service system.” (col. 3, lines 19-21). Col. 7 lines 14-21 recite “when the data server system 32 needs to evaluate the service performance of the data server system 31, the service management system 32a sends a request to the service management system 31a. The service management system 31a then, in accordance with the SLA between the two data service systems, selectively sends some of the management data of the data service system 31 to the service management system 32.” Applicants respectfully submit that this reference does not anticipate “defining classes of back end servers” as disclosed and claimed.

Applicants respectfully submit that contrary to the Examiner's characterization, col. 12, lines 61-67 of Bhoj does not anticipate the step of "selecting a set of service parameters to be monitored for each of said classes of back end servers" as claimed. Applicants respectfully submit that the referenced section has nothing to do with the claimed step. Rather, col. 12, lines 61-67 recite "verify () – this methods verifies the contract between the customers and the service provider. The contents of the contracts are agreed upon prior to this verification request. The input parameters to this method are the customer identity and the contract name to be verified. This method returns a boolean value of whether or not a contract is in compliance." Applicants submit that this reference does not anticipate "selecting a set of service parameters to be monitored" as claimed. No parameters can be selected, as they are agreed upon in advance according to the contract.

Applicants respectfully submit that, contrary to the Examiner's characterization, col. 11, lines 5-6 of Bhoj does not anticipate the step of "creating a database of monitored service parameters" as claimed. Rather, the referenced section of Bhoj recites "the service manager 200 is connected to a contract repository 210 to receive the contract templates from the contract repository 210." Applicant respectfully submits that this reference has nothing to do with the claimed step of "creating a database of monitored service parameters."

Regarding claim 2, the Examiner indicates that Bhoj discloses providing a format in which a set of servers will provide information to be measured (see cols. 9-10, lines 62-7); and implementing means for collecting said information (see col. 11, lines 29-35).

Applicants respectfully submit that, contrary to the examiners characterization, cols. 9-10, lines 62-7 of Bhoj do not anticipate the step of "providing a format in which a set of servers will provide information to be measured" as claimed in claim 2. Rather, the referenced section describes system dependent data that identifies attributes and meta data about the attributes and has nothing to do with the step of providing a format as claimed. The referenced section recites

"The system dependent data identify the attributes as well as meta data about the attributes. The data include which piece of the management

data is used to obtain the attribute value, how often the measurements are made, what parameters are necessary to measure an attribute. For example, for a packet loss measurement, the attributes could specify that the packet loss measurement has a Time-To-Live (TTL) of 15 minutes, that it requires a network segment identification as a parameter, and that it should be obtained using the Network Measures Measurement Means. The system dependent data allows the service management system to operate without the need to know the details of the underlying data service system.”

This reference clearly does not anticipate the claimed step of “providing a format in which a set of servers will provide information to be measured”.

Applicants respectfully submit that contrary to the examiner’s characterization, col. 11 lines 29-35 of Bhoj does not anticipate the step of “implementing a means for collecting said information” as claimed in claim 2. Rather, the referenced section recites “the local system 240 collects **all the management data** from the local infrastructure and applications of the underlying data service system of the service management system 100. Based on the management data collected, the local system 240 provides an abstract view of the underlying data service system to the service manager 200 that is independent of the underlying implementation.” This reference clearly does not anticipate a step of “implementing means for collecting said information” wherein said information is information to be measured according to claim 2. Instead, the reference refers to the system of collecting all management data and has nothing to do with the claimed steps.

Regarding claim 3, the Examiner indicated that Bhoj discloses “generating a database entry for each service commitment element of a service level agreement (see cols. 11-12, lines 66-6).” Applicants respectfully submit that Bhoj does not disclose each and every element of claim 3 for the reasons set forth hereinbefore with respect to claim 1.

Regarding claims 4 and 12, the Examiner indicated that Bhoj discloses “the set of parameters to be measured is selected from the set consisting of records of performance, transactions, errors, client IP address, username, date, time, service, server name, server IP address, processing time, bytes sent, bytes received, service status, operation, target URL, User Agent, referrer parameters, and cookie (see cols. 8-9, lines 38-24).”

Applicants respectfully submit that contrary to the Examiner’s characterization, cols. 8-9, lines 38-24 of Bhoj do not anticipate the step of defining a set of parameters to be measured wherein said parameters to be measured are “selected from the set consisting of: records of performance, transactions, and errors, client IP address, user name, date, time, service, server name, server IP address, processing time, bytes sent, bytes received, service status, operation, target URL, User Agent, referrer parameters, Smserver, Smvirtual site, and cookie” as claimed. Rather, the referenced section of Bhoj describes “a declarative language with syntax similar to the C language which is used in one embodiment of the present invention **to describe a contract specification** in accordance with a predetermined SLA.” (Col. 8, lines 42-46). The referenced description of a contract specification has nothing to do with defining a set of parameters to be measured and more specifically has nothing to do with defining the set of parameters as particularly claimed in claim 4. Similarly, with respect to claim 9, the referenced section of Bhoj does not anticipate the claimed step of “selecting a set of service parameters” to be monitored for each of said classes of back end servers” in which said set of service parameters to be monitored is selected from the set as listed in claim 12.

Regarding claims 5 and 13, the Examiner indicated that Bhoj discloses “the real-time information collected further includes information selected from the group consisting of assigned disk space, that the user can access, how the user’s request is fulfilled within the system or web farm, user’s subscribed level of service or class, transaction, number of requests, download size, file size, file type, time of day, week or month, response time of the back end servers, response time of the web farm, and how long it takes to complete a specified request or file (see col. 9, lines 25-52).”

Applicants respectfully submit that contrary to the Examiner's characterization, col. 9, lines 25-52 of Bhoj do not anticipate the step of "collecting real-time information related to measurement of said parameters... wherein the real-time information collected further includes information selected from the group consisting of assigned disk space, what the user can access, how the user's request is fulfilled within the system or web farm, user's subscribed level of service or class, transaction, number of requests, download size, file size, file type, time of day, week or month, response time of the back end servers, response time of the web farm, and how long it takes to complete a specified request or file" as claimed. Rather, the referenced section of Bhoj describes "a service model of a data server system" (col. 9, line 25) which "identifies the measurements in metrics that are available from each component." (Col. 9, lines 41-43).

Applicants respectfully submit that this does not anticipate collecting real time information related to measurement of any of the claimed parameters or any such step of collecting real-time information.

Regarding claims 10, 11 and 14-16, Applicants respectfully traverse the Examiner's rejections. Contrary to the Examiner's characterization, Applicants respectfully submit that none of the referenced sections of Bhoj (Fig. 10, col. 14, lines 39-44; col. 15, lines 25-34; col. 13, lines 15-19; col. 7, lines 14-21) anticipate each and every element of claim 9 from which each of the referenced claims depend. Applicants respectfully submit that neither Fig. 2 nor col. 7, lines 14-21 of Bhoj disclose the claimed step of "defining classes of back end servers" as claimed in claim 9. Rather, Fig. 2 of Bhoj "shows a prior art scheme outsourcing some services of the data services system of Fig. 1 to another data services system" (col. 3, lines 19-21). Col. 7, lines 14-21 of Bhoj recites "when a data service system 32 needs to evaluate the service performance of the data service system 31, the service management system 32a sends a request to the service management system 31a. The service management system 31a then, in accordance with the SLA between the two data service systems, selectively sends some of the management data of the data service system 31 to the service management system 32a." This reference has nothing to do with the claimed step of defining classes of back end servers.

The Federal Circuit has clearly ruled that anticipation under 35 U.S.C. §102 requires the presence in a single prior art reference of each and every element of the claimed invention, arranged as in the claim. Linderman Maschinenfabrik GMBH v. American Hoist and Derrick Co., 221 USPQ 481, 485 (Fed. Cir. 1984). Applicants respectfully submit that because Bhoj does not anticipate all of the elements of claims 1-5 and 9-16, the Examiner's rejections under 35 U.S.C. §102(b) are improper and should be withdrawn.

Applicants respectfully traverse the Examiner rejection of claims 6-8 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6, 269,401 to Fletcher et al. (hereinafter referred to as "Fletcher").

Regarding claim 6, the Examiner indicated that Fletcher discloses an apparatus comprising a web-site comprising at least one back-end server (see fig. 3, col. 6, lines 26-34) and reporter (see abstract); a network (see col. 6, lines 26-55); a collection processor measuring and collecting a set of defined parameters (see cols. 6-8, lines 56-56); a monitoring processor determining which of said collected parameters exceed a corresponding acceptance level (see col. 25, lines 27-39); and a reporting process that produces a report results [sic] of said monitoring processor (see col. 25, lines 27-37).

Applicants respectfully submit that, contrary to the Examiner's characterization, Fig. 3 and col. 6, lines 26-34 do not anticipate the claimed element of an apparatus for evaluating real time compliance with the service level agreement comprising "a web site comprising at least one back end server and a reporter" as claimed in claim 6. Rather, Fig. 3 of Fletcher is simply "a diagram of a segment of an exemplary computer system communication network upon which the present invention may be practiced" (col. 4, lines 9-11). Col. 6, lines 26-55 of Fletcher describes a "segment 305 of a communication network including host computer systems exemplified by computer systems 110, 110a and 110b in server computer system 250, and central computer system 300 that is alternatively referred to as an "edge monitor". A communication network typically includes communicatively coupled switches, routers and additional segments (not

shown).” (Col 6, lines 26-32) This reference does not anticipate the claimed element of “a web site comprising at least one back end server” as claimed.

Applicants further respectfully submit that, contrary to the Examiner’s characterization, col. 25, lines 27-39, of Fletcher does not anticipate the claimed element “a monitoring processor determining which of said collected parameters exceed a corresponding acceptance level” as claimed in claim 6. Rather, the referenced section of Fletcher describes an apparatus “monitoring application response time (refer to Fig. 4) between client computer system 110 and server computer system 250 and reporting the statistical result to edge monitor 300 as described above. In this embodiment, edge monitor 300 detects that the application response time is greater than a pre-determined limit and triggers an alarm in order to bring the potential problem to the attention of the network manager” col. 25, lines 31-39. This reference does not determine which of said collected parameters exceeds the corresponding acceptance level as claimed but simply triggers an alarm when a particularly known parameter exceeds a corresponding acceptance level.

Regarding claim 7, the Examiner indicated that Fletcher teaches “monitoring a set of defined parameters and logging them into respective log files (see col. 6, lines 40-43); scheduler triggering said reporter to begin collection of log files from a list of back-end server (see col. 8, lines 7-35); an accumulator requesting log files from the intelligent agent of each listed back-end server and consolidating the log files in to a database (see cols 24-25, lines 51-26); an interface mechanism between said accumulator and each of intelligent agent (see col. , said interface mechanism ensuring that each requested log file is completely transferred to the accumulator prior to starting consolidation (see col. 25, lines 3-26).”

Applicants respectfully submit that, contrary to the Examiner’s characterization, col. 6, lines 40-43 of Fletcher does not anticipate the claimed element of “an intelligent agent deployed on each of said back end servers monitoring a set of defined parameters and logging them into respective log files” as claimed in claim 7. Rather, the referenced section of Fletcher recites “the host computer system also measures and stores historical information including system

information consisting of system performance statistics and system parameters.” This reference clearly does not anticipate anything like an intelligent agent deployed on each set of backend servers as claimed.

Applicants further submit that, contrary to the Examiner’s characterization, col. 25, lines 3-26 of Fletcher does not anticipate “an interface mechanism between said accumulator and each intelligent agent, said interface mechanism insuring that each requested log file is completely transferred to the accumulator prior to starting consolidation.” Applicants submit that no reference to any such interface mechanism can be found in the referenced section of Fletcher. Rather, the referenced section of Fletcher describes a manner in which “the present invention enables the network manager to integrally view corresponding network performance statistics in system information for a selected time interval, or for the time interval corresponding to the identification of a perturbation in the communication network.” (Col. 25, lines 16-21).

Regarding claim 8, the Examiner indicated that Fletcher teaches keeps [sic] track of which portions of said log files have been transferred (see col. 24, lines 29-50). Applicants respectfully traverse the Examiner’s rejection of claim 8 for the reasons set forth hereinbefore with respect to claims 6 and 7.

Applicants respectfully submit that because Fletcher does not anticipate all of the claimed elements of claims 6-8 arranged as in the claims the Examiner has not made a prima facie case of anticipation under 35 U.S.C. 102(e). Accordingly, the rejection of claims 6-8 should be withdrawn.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such action is hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, he is kindly requested to contact the undersigned at the telephone number listed below. The Examiner is invited and encouraged to telephone the undersigned with any concerns in furtherance of the prosecution of the present application.

Please charge any deficiency as well as any other fees which may become due at any time during the pendency of this application, or credit any overpayment of such fees to deposit account No. 50-0369. Also, in the event any extensions of time for responding are required for the pending application(s), please treat this paper as a petition to extend the time as required and charge deposit account No. 50-0369 therefore.

Respectfully submitted,

11-8-02
Dated:

Brian Michaelis

Brian L. Michaelis, Esq.

Reg. No. 34,221

Customer No. 21710

Attorney for Applicant

BROWN RUDNICK BERLACK ISRAELS LLP

Box IP, 18th Floor

One Financial Center

Boston, MA 02111

Tel: 1-617-856-8369

Fax: 1-617 856-8201